

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

STATE OF TEXAS,

Plaintiff,

v.

The UNITED STATES OF AMERICA;
DAVID PEKOSKE, Acting Secretary of the
United States Department of Homeland
Security, in his official capacity; UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY; TROY MILLER, Senior Official
Performing the Duties of the Commissioner of
U.S. Customs and Border Protection, in his
official capacity; U.S. CUSTOMS AND
BORDER PROTECTION; TAE JOHNSON,
Acting Director of U.S. Immigration and
Customs Enforcement, in his official capacity;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT; TRACY RENAUD,
Senior Official Performing the Duties of the
Director of the U.S. Citizenship and
Immigration Services, in her official capacity;
U.S. CITIZENSHIP AND IMMIGRATION
SERVICES,

Defendants.

Civ. Action No. 6:20-cv-00003

**APPENDIX IN SUPPORT OF
TEXAS'S MOTION FOR A PRELIMINARY INJUNCTION**

EXHIBIT 9

DHS ALIEN INCARCERATION REPORT, FISCAL YEAR 2017

Alien Incarceration Report Fiscal Year 2017, Quarter 4

December 21, 2017



**Homeland
Security**



THE UNITED STATES
DEPARTMENT *of* JUSTICE

On January 25, 2017, the President signed Executive Order (EO) 13768 on *Enhancing Public Safety in the Interior of the United States*.

Section 16 of the EO directs the U.S. Department of Homeland Security (DHS) and the Department of Justice (DOJ) to collect relevant data and provide quarterly reports on: (a) the immigration status of all aliens incarcerated under the supervision of the Federal Bureau of Prisons (BOP); (b) the immigration status of all aliens incarcerated as federal pretrial detainees under the supervision of the United States Marshals Service (USMS); and (c) the immigration status of all convicted aliens incarcerated in state prisons and local detention centers throughout the United States.

This Fiscal Year (FY) 2017, Quarter 4 report includes data on aliens incarcerated under the supervision of BOP and USMS.

Summary of Findings

A total of 58,766 known or suspected aliens were in in DOJ custody at the end of FY 2017, including 39,455 persons in BOP custody and 19,311 in USMS custody.

Of this total, 37,557 people had been confirmed by U.S. Immigration and Customs Enforcement (ICE) to be aliens (*i.e.*, non-citizens and non-nationals), while 21,209 foreign-born people were still under investigation by ICE to determine alienage.

Among the 37,557 confirmed aliens, 35,334 people (94 percent) were unlawfully present. These numbers include a 92 percent unlawful rate among 24,476 confirmed aliens in BOP custody and a 97 percent unlawful rate among 13,081 confirmed aliens in USMS custody.

This report does not include data on the foreign-born or alien populations in state prisons and local jails because state and local facilities do not routinely provide DHS or DOJ with comprehensive information about their inmates and detainees. This limitation is noteworthy because state and local facilities account for approximately 90 percent of the total U.S. incarcerated population. DHS and DOJ are working to develop a reliable methodology for estimating the status of state and local incarcerated populations in future reports.

ICE-DOJ Immigration Status Determinations

Pursuant to EO 13768, USMS and BOP facilities have begun providing to ICE on a quarterly basis comprehensive biographic data on inmates and detainees who are identified as foreign-born. In turn, ICE checks USMS and BOP foreign-born detainee data against its ICE Enforcement and Removal Operations (ERO) case management system, the ENFORCE Alien Removal Module (EARM), and the U.S. Citizenship and Immigration Services' Central Index System to identify aliens with immigration records and pending or completed removal proceedings. This approach allows ICE to place each foreign-born person within one of the following five categories for each quarterly report:



- Under Investigation: Further investigation by ICE is required to confirm alienage and establish potential removability.
- In proceedings – Legal: Confirmed alien who is lawfully present in the United States but has been charged as a removable alien; removal proceedings are ongoing.
- In proceedings – Illegal: Confirmed alien who is unlawfully present¹ in the United States and has been charged as a removable alien; removal proceedings are ongoing.
- Subject to final order of removal: Confirmed alien who is subject to a final order of removal—meaning that the alien has no lawful status in the United States.
- Relief/Benefit: Confirmed alien who has been granted relief or protection from removal that would generally be considered lawful status. However, depending on the nature of the inmate’s criminal offense, his/her status may be subject to review and rescission or revocation by DHS or an immigration judge.

Immigration Status of Aliens in BOP Custody

As of September 28, 2017, a total of 24,476 confirmed aliens were housed in BOP facilities, and an additional 14,979 foreign-born individuals in BOP facilities remained under ICE investigation; together these known and suspected aliens accounted for 21 percent of all federal inmates in BOP custody.² At least 22,614 aliens in BOP facilities were unlawfully present, including 20,240 people (51 percent of the total) who had been ordered removed and 2,374 people (six percent) who were unlawfully present and in removal proceedings. Less than five percent of the total (1,852 people) were lawfully present and in removal proceedings, and just 10 aliens had received an immigration benefit or received relief from removal. *See Figure 1.*

Under the Institutional Hearing and Removal Program, ICE and BOP are working to complete immigration court proceedings prior to the completion of an alien’s sentence in order to reduce or eliminate the need for further detention once an alien is released to ICE custody from BOP.

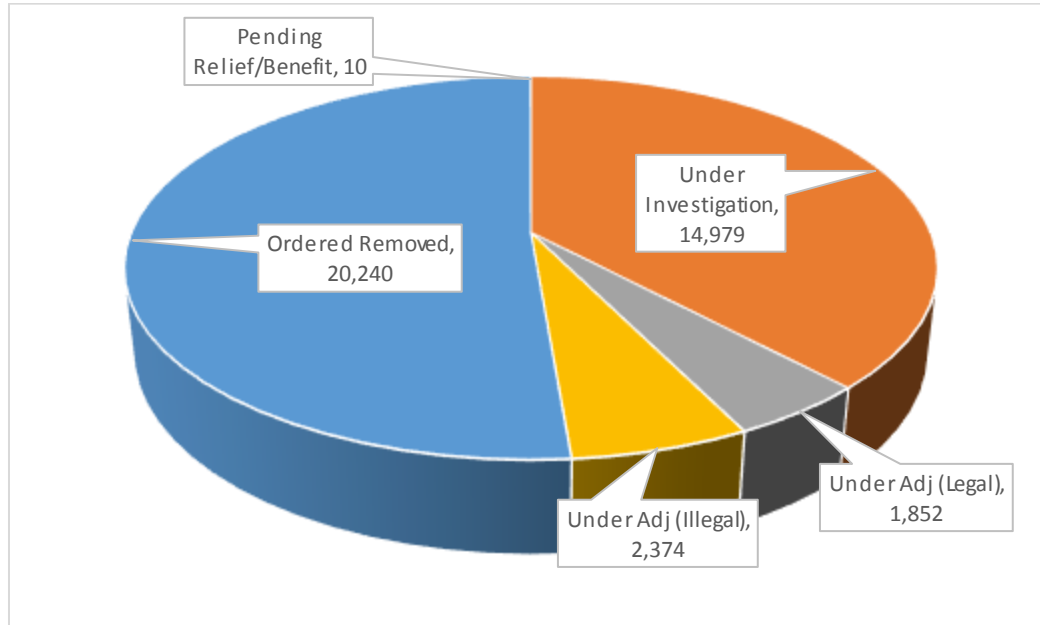
As a result, ICE and BOP expect the proportion of the foreign-born population remaining in the “under investigation” status to decline over time—a trend that was observed in this quarter. As of September 28, 2017, 38 percent of foreign-born inmates were under investigation, down from 50 percent on June 24, 2017. While persons under ICE investigation represented a smaller percent of the known and suspected alien population, the percentage who had been ordered removed increased from 44 percent of the total in Q3 to 51 percent in Q4.

¹ The immigrations laws define “unlawful presence” to include those circumstances where an “alien is present in the United States after the expiration of the period of stay authorized ... or is present in the United States without being admitted or paroled.” 8 U.S.C. § 1182 (a)(9)(B)(ii). Unlawfully present includes those who entered the United States without being admitted or paroled, and may include those who subsequently adjusted status or were lawfully admitted but the Immigration Court System has issued an administrative final order rendering them unlawfully present.

² Total counts in BOP and USMS facilities reflect the populations on reported dates and are not quarterly or yearly totals.



Figure 1: Known and Suspected Aliens in Bureau of Prisons Custody, September 28, 2017.



Source: U.S. Department of Homeland Security.

Immigration Status of Aliens in USMS Custody

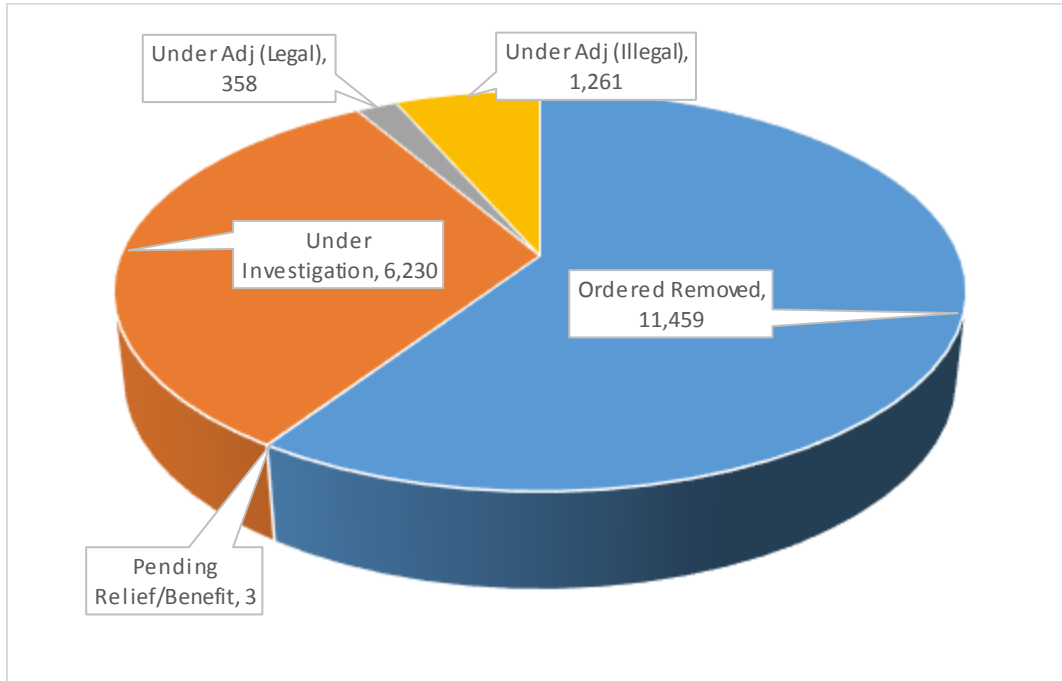
The USMS is DOJ's component charged with the housing and care of federal pretrial detainees. USMS also houses certain short-term sentenced aliens, as well as sentenced aliens pending transfer to the BOP; this report includes data on all known and suspected aliens in USMS custody.³ As of October 2, 2017, a total of 19,311 known and suspected aliens were housed in USMS facilities. Of the confirmed aliens in USMS custody, 66 percent (12,720) were unlawfully present, including 11,459 aliens (59 percent) with an administrative final order of removal and 1,261 aliens (6.5 percent) who were unlawfully present but pending adjudication in removal proceedings. See Figure 2.

Most of the remainder (6,230 individuals or 32 percent) were still under investigation. Less than two percent of confirmed aliens in USMS custody who have been screened by ICE were lawfully present and in immigration proceedings (358 individuals). As of October 2, 2017, USMS was housing only three aliens in receipt of a grant of protection or relief.

³ USMS data reflects all aliens in USMS custody. No distinction was made to delineate solely pre-trial aliens as the USMS also detains post-trial aliens completing short term sentences and/or transfer to USBOP.



Figure 2: Known and Suspected Aliens in U.S. Marshals Service Custody, October 2, 2017



Source: U.S. Department of Homeland Security.

